IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.38 OF 2002

IN

NOTICE OF MOTION NO.908 OF 1999

IN

SUM.SUIT NO.491 OF 1999

...

Jetu Jacques Taru Lalvani ...Petitioner

v/s.

Hamco Mining and Smeting Ltd.

and Anr. ...Respondents

(Orig.Defendants)

Nos. 2 & 3.

And

Mr.Pravinchandra V. Gandhi

and ors. ...Respondents

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Mr.Shah withMr.N.K. Mudnaney for the Petitioner.

Ms.Alpana Ghone i/b Kanga & Co. for Respondent No.3.

Mr.A.J.Almedia for Respondent No.11.

Mr.P.K.Dhakephalkar with Mr.Vijay Nair, Ms.Manorama Mohanty for Respondent No.15.

Mr.Nitin G. Thakkar with Mr.Shnehal Shah & Mr.Gobinda C. Mohanty i/b Kirit N. Damania & Co. for Respondent No.16.

Mr.K.P.Jain i/b T.Goradia for Respondent No.17.

Mr.J.Reis i/b M.S.T.Shaikh for Respondent No.19.

Mr.Sanjay Jain for Respondent No.10.

Ms.Bhagyashree Rongari i/b S.Ashwinkumar & Co. for Respondent No.7.

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CORAM: D.K.DESHMUKH, J.

DATED: 21ST FEBRUARY,2007

P.C.:

1. After spending considerable time on hearing the learned Counsel appearing for the Petitioner on merits of the matter, firstly it was discovered that in this petition there is no show cause notice issued by the office requiring the Respondents to show cause why they should not be tried and punished for having committed civil contempt of this court, though there

is an order made by the court on 29-7-2004 admitting the petition for final hearing.

2. The case of the Petitioner is that ad-interim order dated 24-3-1999 passed by this court in summary suit No.491 of 1999 has been violated. That order was passed in Notice of Motion taken out by the Plaintiff in that suit. Perusal of that order shows that the court had granted ad-interim injunction in terms of prayer clauses (d) & (e) excluding the properties in the State of Gujarat. According to the Petitioner, in violation of that order three properties namely i) Yashwant Chambers, Mumbai, ii) Resham Bhuvan, Mumbai and iii) Unit No.1, Luthra Industrial Estate Premises, Andheri, Mumbai have been transferred.

3. To the suit in which this order of temporary injunction was made, present Respondent No.1 Hamco Mining and Smelting Ltd., which admittedly is a company incorporated under the Companies Act and the present Respondent No.2 Mr.B.M.Patel were the Defendants. Perusal of the prayer clause of the contempt petition shows that the Petitioner is praying that the Respondent No.2 Mr.B.M.Patel and the

Respondent No.14 Neeta Harikshan Desai should be committed to civil prison and/or fined for having willfully violated the order dated 24-3-1999 referred to above and that fine should be imposed on Respondents Nos.1, 15, 16 & 17 for the same wrong. Though the Petitioner is praying for an order of committing the Respondent No.2 to civil prison, perusal of the petition shows that in the petition except for saying that the Respondent No.2 was the Chairman and Managing Director of Respondent No.1 company, there is no particular role ascribed to him in allegedly willfully violating the interim order made by this court.

. So far as Respondent No.14 is concerned, the only allegation that is made against him in the petition is that he is a company secretary and authorised signatory of the Respondent No.1. What is significant is that the Respondents Nos. 3 to 13 have been joined as Respondents to this petition in their capacity as Directors of the Respondent No.1, but there is no relief claimed in the petition that they also be punished for having violated the order made by this court. In the absence of making any specific allegation against the Respondents Nos. 2

to 14 as to how they are responsible for violating the order made by this court, in my opinion, they cannot be held guilty of having committed contempt of this court. So far as the Respondent No.1 is concerned, if according to the Petitioner Respondents Nos. 3 to 13, who are Directors of the Respondent No.1, are not guilty of having committed contempt petition of this court, then in my opinion, Respondent No.1 alone cannot be guilty of willfully violating the order made by this court.

. So far as Respondents Nos. 15, 16 and 17 are concerned, admittedly they were not parties to the civil suit where the interim order has been made. The interim order is an order of temporary injunction. The settled law is that an order of injunction is directed against a party to the litigation and binds only parties to the litigation and therefore, there is no question of punishing the Respondents Nos.15, 16 & 17 for violating the order of temporary injunction made by this court because the order did not bind them. Respondents Nos. 18 & 19 have been added to the petition, but in the petition there are no allegations made as to how they have willfully violated the order made by this court.

In the prayer clause also there is no prayer made that they should be punished for having committed contempt of this court. One more aspect, in my opinion, that is relevant is in the summary suit where the interim order is made, there is already a decree passed in favour of the Plaintiff and the Petitioner has already taken up execution of that decree.

4. Considering this situation, in my opinion, it will not be in the interest of justice to keep this petition pending any longer. In my opinion, it will be in the interest of justice to dispose of this petition making it clear that all contentions raised in this petition by the Petitioner shall be open to be raised by the Petitioner in the execution petition that may be taken up by the Petitioner. Petition disposed of. No order as to costs.

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